Filed 4/10/09 Baldwin Ranch Ltd. Partnership v. Owens Mortge. Investment Fund CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

BALDWIN RANCH LIMITED PARTNERSHIP, Plaintiff and Appellant, v. OWENS MORTGAGE INVESTMENT FUND et al., Defendants and Respondents.	C058347 (Super. Ct. No. 72758)

Plaintiff Baldwin Ranch Limited Partnership defaulted on loans of more than $28 million from defendant Owens Mortgage Investment Fund that were secured by a deed of trust on Baldwin's real property.[1] In the course of nonjudicial foreclosure proceedings, Baldwin and Owens entered into an agreement that gave Owens possession of the property and released Baldwin from liability for the loan (including any possible deficiency). After the foreclosure sale was delayed,

---

[1] Defendant Investors Yield, Inc., was the trustee under the deed of trust. We will refer to Baldwin and Investors Yield jointly as defendants.

however, Baldwin brought this quiet title action, claiming the release agreement had extinguished Owens's security interest in the property before the foreclosure was complete and therefore Owens had no interest in the property and Baldwin owed Owens nothing. The trial court sustained Owens's demurrer without leave to amend, concluding (implicitly) that the release agreement was not reasonably susceptible to the interpretation on which Baldwin's action was premised.

On Baldwin's appeal, we agree with the trial court. When the agreement is considered and construed as a whole, Baldwin's interpretation of it is patently unreasonable, and the additional facts Baldwin claims it could allege if given leave to amend do not alter that conclusion. Accordingly, we will affirm the judgment of dismissal.

FACTUAL AND PROCEDURAL BACKGROUND

We take the following material facts from the complaint. In March 2001, Baldwin acquired ownership of certain real property in Nevada County, which Baldwin later subdivided into more than 70 lots. The lots comprised (or were part of) a subdivision known as Darkhorse, Phases II and III. We will refer to the property as the subdivision.

In December 2004, Baldwin and a related entity, Darkhorse LLC, borrowed over $24.4 million from Owens under a construction loan agreement.[2] The loan was secured by a deed of trust on the

---

[2] Although it is not expressly pled in the complaint, it is apparent from the agreement incorporated into the complaint that

subdivision. The deed of trust also encumbered an adjacent golf course owned by Darkhorse.[3]

In April 2006, Baldwin and Darkhorse borrowed another $3.6 million from Owens, and repayment of this additional amount was also secured by a deed of trust on the subdivision and the golf course.

Subsequently, Baldwin and Darkhorse defaulted on their obligations to Owens, and Owens commenced nonjudicial foreclosure proceedings under the deed of trust.

On August 8, 2007, Owens entered into an "Agreement For Possession Of Properties, Partial Release and Covenant Not To Sue" with Baldwin, Darkhorse, and four individuals (the Fralicks) who were guarantors of the obligations of Baldwin and Darkhorse. The agreement recited that "during the course of the foreclosure proceedings Owens desires to voluntarily obtain from Baldwin Ranch and Darkhorse the right to possession and use of the Encumbered Properties . . . in order to protect and preserve

---

Baldwin and Darkhorse are related entities because: (1) Edwin and Chad Fralick signed the agreement on behalf of Baldwin in their capacities as CEO and CFO (respectively) of 1st Granite Bay Corp., the general partner of Baldwin; and (2) Edwin and Chad Fralick also signed the agreement on behalf of Darkhorse in their capacities as CEO and CFO (respectively) of Quail Point, Inc., the manager of Darkhorse.

[3] Although it is not readily apparent from the face of the complaint, Baldwin acknowledges in its opening brief that Darkhorse owned property consisting of a golf course, Baldwin owned the surrounding residential lots, and the loan from Owen was secured by a single deed of trust encumbering both the golf course and the residential lots.

the value of the Encumbered Properties . . . ."[4] The agreement also recited that Baldwin and Darkhorse "desire to be released from any liability to Owens under the Loan Documents, or upon any other theory of recovery, whether based in law or in equity, on or after completion of the foreclosure proceedings," while the Fralicks "desire to be released from any liability to Owens under the Guaranty, or upon any other theory of recovery, whether based in law or equity, on and after the Effective Date," which was later identified as August 17, 2007.

Under the terms of the agreement, Baldwin and Darkhorse were to deliver possession of the subdivision and the golf course to Owens on August 17 (the effective date), and Owens's possession was to "continue until such time as a Trustee's Sale shall occur completing the foreclosure of the Encumbered Properties and transferring title to the Encumbered Properties to the purchase[r] at such sale." Immediately thereafter, however, the agreement provided that Owens's right to possession under the agreement was to terminate either "[o]n or after (i) the Foreclosure Sale, or (ii) September 30, 2007, whichever occurs first." The period of Owens's possession under the agreement was referred to as the "Term." The agreement went on to require the Fralicks to assist Owens in the management and operation of the properties "during the Term and for a period

---

[4] The "Encumbered Properties" were defined as "the real properties of Baldwin . . . and Darkhorse" on which Owens had commenced foreclosure proceedings, i.e., the subdivision and the golf course.

ending two calendar months after expiration of the Term." The agreement also required Baldwin and Darkhorse to assign to Owens (to the extent they could) their rights under certain golf cart leases and their rights to certain maintenance equipment and office support equipment used in the construction, operation, and maintenance of the properties and for Owens to assume the obligations of Baldwin and Darkhorse under the leases, loan agreements, and contracts related to those golf carts and that equipment.

Paragraph No. 6 of the agreement described the release of Baldwin and Darkhorse from liability for the loans. That paragraph provided in its entirety as follows: "Notwithstanding any lesser amount paid by Owens or any third party purchaser for the Encumbered Properties at the Foreclosure Sale, it shall be conclusively presumed and agreed by and between Owens, on behalf of itself, any parent, subsidiary or affiliated corporation, successor or assign (collectively 'the Owens Group'), Baldwin Ranch and Darkhorse that the amount paid at the Foreclosure Sale for the Encumbered Properties was not less than the amount required to fully satisfy, retire and pay all monetary obligations of Baldwin Ranch and Darkhorse, or either of them, under the Loan Documents. Without limiting the breadth of the foregoing, as of the date of the Effective Date, and except for the obligations created or assumed under this Agreement, the Owens Group, releases Baldwin Ranch and Darkhorse, and their officers, directors, partners, managers, members, agents, successors and assigns, from any and all Claims relating to or

arising out of or under the Loan Documents." The word "Claims" had been previously defined as "all claims, demands, causes of action, obligations, damages and liabilities, including attorneys fees, litigation costs and other expenses, whether based in contract, tort, statute or other legal or equitable theory of recovery."

Paragraph No. 7 contained a similar provision releasing the Fralicks from any claims "relating to or arising out of or under the Loan Documents and the Guaranty" "as of the Effective Date" of the agreement.

Baldwin delivered possession of the subdivision to Owens on August 17 as the agreement required. On that same date, Investors sold the golf course in a nonjudicial foreclosure sale, but did not sell the subdivision. Instead, the foreclosure sale of the subdivision was scheduled for September 27.

On September 25, two days before the scheduled foreclosure sale of the subdivision, Baldwin commenced this action by filing a complaint for quiet title, cancellation of documents, and declaratory and injunctive relief. On the same day, Baldwin recorded a lis pendens against the subdivision. In its complaint, Baldwin alleged that by virtue of paragraph No. 6 of the agreement Baldwin was "released from all further obligation to repay the loan" to Owens as of August 17, 2007 and "the lien or liens created by the Deed of Trust . . . have been extinguished." Thus, Baldwin claimed it did not owe Owens any

money and it owned the subdivision free of any encumbrance in favor of Owens.

Defendants demurred to the complaint on the grounds (among others) that it failed to state a cause of action. Defendants emphasized the provision (contained in paragraph No. 2) that gave Owens possession of the subdivision and the golf course "until such time as a Trustee's Sale shall occur completing the foreclosure of the Encumbered Properties."

In reply, Baldwin contended the trial court should overrule the demurrer because defendants had not shown Baldwin's construction of the agreement was clearly erroneous.

The trial court issued a tentative ruling stating it was inclined to sustain the demurrer without leave to amend but inviting Baldwin to "present facts or law that would show there is a reasonable probability [it] can state a cause of action if leave to amend is granted." At the hearing on the demurrer, Baldwin argued it was sufficient to plead its interpretation of the agreement without pleading evidentiary facts supporting that interpretation, but if such facts were necessary, then it could plead that the second sentence in paragraph No. 6 was added as one of the last two changes to the agreement, along with the removal of a paragraph that included a waiver of Civil Code Section 1542.[5]

---

[5] That statute provides that "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release,

The trial court took the matter under submission but thereafter adopted its tentative ruling sustaining the demurrer "except that leave to amend is not granted." From the ensuing judgment of dismissal, Baldwin filed a timely notice of appeal.

DISCUSSION

Baldwin contends the trial court erred in sustaining the demurrer because the court "substitut[ed] its own interpretation [of the agreement] for the alternative, reasonable interpretation advanced by Baldwin." Baldwin also contends that if the demurrer was properly sustained, the trial court nonetheless abused its discretion in denying leave to amend. We disagree on both points.

I

Sustaining Of The Demurrer

We begin with Baldwin's claim of error in the sustaining of the demurrer.[6] "The function of a demurrer is to test the

---

which if known by him or her must have materially affected his or her settlement with the debtor." (Civ. Code, § 1542.)

[6] Although Baldwin does not raise the issue, at first glance the propriety of sustaining a demurrer to a cause of action for declaratory relief without leave to amend appears suspect, because in a declaratory relief action the plaintiff "'is entitled to a declaration of his rights even if it be adverse.'" (*Arroyo v. Regents of University of California* (1975) 48 Cal.App.3d 793, 796.) It is established, however, that "'where the issue is purely one of law, if the reviewing court agreed with the trial court's resolution of the issue it would be an idle act to reverse the judgment of dismissal for a trial on the merits. In such cases the merits of the legal controversy may be considered on an appeal from a judgment of dismissal following an order sustaining a demurrer without leave to amend and the opinion of the reviewing court will constitute the

sufficiency of the complaint by raising questions of law. [Citation.] . . . A general demurrer admits the truth of all material factual allegations of the complaint; plaintiff's ability to prove the allegations, or the possible difficulty in making such proof, does not concern the reviewing court. [Citation.] 'As a reviewing court we are not bound by the construction placed by the trial court on the pleadings but must make our own independent judgment thereon . . . .'" (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 238-239.)

"Where a complaint is based on a written contract which it sets out in full, a general demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible." (*Aragon-Haas v. Family Security Ins. Services, Inc.*, *supra*, 231 Cal.App.3d at p. 239.) "'So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff's allegations as to the meaning of the agreement.'" (*Ibid.*)

The question here, then, is whether the interpretation of the agreement advanced by Baldwin in its complaint is one to which the agreement is reasonably susceptible, or whether (as the trial court implicitly concluded) Baldwin's interpretation

---

declaration of the legal rights and duties of the parties concerning the matter in controversy.'" (*Ibid.*)

is clearly erroneous. In answering that question, we are guided by various principles of contract interpretation. "'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.' [Citations.] The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties." (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912.) Furthermore, it is "the mutual intention of the parties as it existed at the time of contracting" that matters. (Civ. Code, § 1636.)

"In construing a contract the court should strive to ascertain its object as reflected in the provisions thereof; should be guided by the intention of the parties as disclosed by those provisions [citations]; should endeavor to effect the intention and object thus ascertained [citation]; should adopt that construction which will make the contract reasonable, fair and just [citations]; . . . [and] should avoid an interpretation which will make the contract unusual, extraordinary, harsh, unjust or inequitable . . . ." (*Harris v. Klure* (1962) 205 Cal.App.2d 574, 577-578.)

Given that Baldwin's claim to title of the subdivision free of any encumbrance in favor of Owens is based entirely on paragraph No. 6 of the agreement, the principles of contract

interpretation relating to interpreting a contract as a whole are of particular significance here. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.) While "the language of the agreement, if clear and explicit and not conducive to an absurd result, must govern its interpretation," "this does not mean that a portion only of a written instrument, although it is clear and explicit, may be selected as furnishing conclusive evidence of the intentions of the parties." (*Universal Sales Corp. v. Cal. etc. Mfg. Co.* (1942) 20 Cal.2d 751, 760.) "The character of a contract is not to be determined by isolating any single clause . . . ." (*Transportation Guar. Co. v. Jellins* (1946) 29 Cal.2d 242, 247.)

If it is impossible to give effect to all the provisions in an agreement, "'an interpretation which gives effect to the main apparent purpose of the contract will be favored.'" (*McNeil v. Graner* (1949) 91 Cal.App.2d 858, 864.) Thus, "Particular clauses of a contract are subordinate to its general intent." (Civ. Code, § 1650.) Moreover, "'[t]he general rule is that where two clauses of a contract cannot be reconciled the first shall be received and the latter rejected.'" (*Burns v. Peters* (1936) 5 Cal.2d 619, 623.) Also, "If necessary to carry out the intention of a contract, words may be transposed, rejected, or supplied, to make its meaning more clear." (*Heidlebaugh v. Miller* (1954) 126 Cal.App.2d 35, 38.)

With these principles in mind, we turn to Baldwin's interpretation of the agreement. Relying exclusively on the second sentence in paragraph No. 6, Baldwin asserts that "[o]n August 17, 2007, all debtors were released from all obligations and liabilities relating to or arising out of or under the loans or Deed of Trust" -- regardless of the fact that Owens did not complete the foreclosure sale of the subdivision on that date and instead continued the sale of that portion of the encumbered properties to September 27. And because Baldwin's obligation and liability to Owens under the loans were released on August 17, Owens's right to sell the subdivision under the deeds of trust that secured those loans was extinguished on that date as well. (See Civ. Code, § 2909; *Trowbridge v. Love* (1943) 58 Cal.App.2d 746, 751.) Thus, in Baldwin's view, under the agreement Owens had to complete the foreclosure sale of both the golf course and the subdivision on August 17 or lose any right it had to those properties and any right it had to otherwise enforce the obligation of Baldwin and Darkhorse to repay the more than $28 million they borrowed from Owens.

For the reasons set forth below, we cannot accept Baldwin's construction of the agreement as even marginally reasonable. It is true the sentence of the agreement on which Baldwin relies provides that "as of the date of the Effective Date, . . . Owens . . . releases Baldwin . . . from any and all Claims relating to or arising out of or under the Loan Documents." But as we have explained, contract provisions are not to be read in isolation, and when the second sentence of paragraph No. 6 is read as part

of the *entire* agreement, it is readily apparent that Baldwin's interpretation of the agreement is unreasonable and inconsistent with the principles of contract interpretation set forth above.

First, it must be noted that the second sentence of paragraph No. 6 cannot reasonably be reconciled with paragraph I of the recitals in the agreement.[7] Paragraph I recites that the desire of the borrowers, Baldwin and Darkhorse, in entering into the agreement, was "to be released from any liability to Owens . . . *on or after completion of the foreclosure proceedings*." (Italics added.) In contrast, paragraph J recites that the guarantors (the Fralicks) wanted "to be released from liability to Owens . . . *on and after the Effective Date*." (Italics added.)

One would reasonably expect a similar contrast between the language of paragraph No. 6 -- the release of Baldwin and Darkhorse -- and the language of paragraph No. 7 -- the release of the Fralicks -- but that contrast is curiously lacking. While paragraph No. 7 -- consistent with the provision in recital paragraph J -- releases the Fralicks "as of the Effective Date," paragraph No. 6 purports to release Baldwin and Darkhorse "as of the date of the Effective Date," which stands in stark contrast to the provision in recital paragraph I

---

[7] Lest there be any doubt as to the binding force of the recitals, paragraph No. 1 of the agreement provides that "[t]he foregoing recitals are true and correct and by this reference incorporated herein."

indicating Baldwin and Darkhorse sought to be released only "on or after completion of the foreclosure proceedings."

The curiously ungrammatical phrase in paragraph No. 6 -- "as of the date of the Effective Date" (instead of the phrase "as of the Effective Date," used in paragraph No. 7) -- suggests the language that ended up in the second sentence of paragraph No. 6 may have been a mistake. If paragraph No. 6 had provided for the release of Baldwin and Darkhorse "as of the date of the *Foreclosure Sale*," for instance, it would have made more sense grammatically *and* would have been consistent with recital paragraph I. Be that as it may, however paragraph No. 6 came to be the way it is we conclude it is in conflict with recital paragraph I as to when Baldwin and Darkhorse were to be released from their liability to Owens. Because the two provisions cannot reasonably be reconciled, the principles of contract interpretation cited above require us to enforce the former (recital paragraph I) and reject the latter (paragraph No. 6), which defeats Baldwin's position here.

This result is consistent with the principle that where we cannot give effect to all the provisions in an agreement, we must favor an interpretation that gives effect to the main apparent purpose of the agreement. Read as a whole, the main purpose of the agreement was twofold: The agreement gave Owens possession of the subdivision and the golf course so that Owens could "protect and preserve the value of [those p]roperties" "during the course of the foreclosure proceedings," while at the same time the agreement released Baldwin, Darkhorse, and the

Fralicks from liability for a deficiency judgment to Owens, i.e., the difference, if any, between the fair market value of the property held as security and the outstanding indebtedness to Owens. (See *Cornelison v. Kornbluth* (1975) 15 Cal.3d 590, 603 [defining deficiency judgment].) If the agreement is read with the understanding that this was its main purpose, and with the concomitant understanding that Baldwin's interest in the subdivision (just like Darkhorse's interest in the golf course) was going to be eliminated along with its liability to Owens as the result of the foreclosure sale, then the various provisions of the agreement are easily reconcilable. If, on the other hand, we adopt Baldwin's interpretation of the agreement and read it to allow for the possibility that Baldwin would be able to escape its liability to Owens while simultaneously *maintaining* ownership of the subdivision, then the various provisions of the agreement clash in cacophonous disharmony.

Take paragraph No. 2, the one on which defendants primarily rely. The first sentence in that paragraph provides for Owens to have possession of the subdivision and the golf course from August 17 "until such time as a Trustee's Sale shall occur *completing* the foreclosure of the Encumbered Properties and transferring title to the Encumbered Properties to the purchase[r] at such sale." (Italics added.) Plainly this provision contemplated that both the subdivision and the golf course would be sold in foreclosure and that Owens would have possession of the properties until that occurred. Nothing in this provision suggests Baldwin would, under any circumstances,

remain the owner of the subdivision (or, for that matter, that Darkhorse would remain the owner of the golf course).

Baldwin tries to reconcile this part of paragraph No. 2 with the second sentence of paragraph No. 6 by arguing that paragraph No. 2 "deals with the right to *possession* of the encumbered properties" while paragraph No. 6 deals with when "the express, non-possessory extinction of the parties' obligations under the loan documents was to occur." (Italics omitted.) By this reasoning, although Owens's security interest in the property was extinguished on August 17 under paragraph No. 6, Owens nonetheless remained entitled to possession of the subdivision and golf course under paragraph No. 2 "until such time as a Trustee's Sale shall occur completing the foreclosure." But this interpretation makes no sense, because what good would possession of the properties have been to Owens if its security interest -- and thus its very right to sell the properties in foreclosure -- was gone? Why would Owens have bargained for the right to maintain possession of the properties until completion of a sale it had lost the legal right to conduct?

Baldwin fares no better with the second sentence of paragraph No. 2, which -- we note -- is inconsistent with the first sentence. As we have seen, under the first sentence of the paragraph Owens had the right to possess the property until title was transferred to a purchaser by completion of the foreclosure sale. Under the second sentence, however, Owens's right to possession was to terminate on or after "(i) the

Foreclosure Sale, or (ii) September 30, 2007, whichever occurs first." Thus, under the second sentence of paragraph No. 2, Owens's right to possession of the property under the agreement could have terminated before the completion of the foreclosure if the foreclosure sale did not take place until after September 30.

Even if we assume the second sentence trumps the first sentence in this regard, it is of no benefit to Baldwin because Baldwin's interpretation of the agreement is still unreasonable. This is so because even if Owens's right to possession was to terminate as of September 30 regardless of whether the foreclosure sale was complete on that date, the question remains, why would Owens have bargained to maintain possession of the property for *any* period beyond August 17 when its right to sell the property in foreclosure was to vanish on that date? The whole point of Owens taking possession of the subdivision and the golf course in the first place was, as we have noted, to "protect and preserve the value of [those p]roperties" "during the course of the foreclosure proceedings." Once Owens's right to complete those proceedings expired, however -- which Baldwin contends occurred on August 17 -- Owens had no further interest in protecting and preserving the properties.

Indeed, under Baldwin's interpretation of the agreement, Owens essentially got nothing out of it at all. For Baldwin, the "Effective Date" of August 17 was both the date Baldwin and Darkhorse were required to deliver possession of the subdivision and the golf course to Owens under paragraph No. 2 *and* the date

on which Owens's right to foreclose on the properties or otherwise collect its debt from Baldwin and Darkhorse was extinguished under paragraph No. 6. But if this were correct, then what Owens contracted for was the right to possession of the properties on the very same day its security interest in the properties -- and thus its very reason for seeking possession of the properties in the first place -- was extinguished. Contracts are to be interpreted to avoid such absurdities. (See Civ. Code, § 1638.) Thus, Baldwin's attempt to reasonably reconcile paragraph Nos. 2 and 6 fails.

Paragraph No. 2, however, is not the only provision of the agreement with which Baldwin's interpretation of the agreement clashes. Paragraph No. 3 required the Fralicks to assist Owens in the management and operations of the subdivision and the golf course until two months after the completion of the foreclosure sale or until November 30, whichever came first. If the parties reasonably contemplated that Owens would lose its security interest in the properties on August 17 if it did not complete the foreclosure sale on that date, then why would they have made any provision for the Fralicks to assist Owens in managing the properties until November 30? It would have been sufficient for the parties to agree the Fralicks would assist Owens for two months after completion of the foreclosure sale, period.

Baldwin's interpretation of the agreement is also inconsistent with the provisions in paragraphs Nos. 4 and 5 that provided for Owens to assume the obligations of Baldwin and Darkhorse under the golf cart leases and the various leases and

contracts on the equipment used in the construction, operation, and maintenance of the encumbered properties. Nothing in those provisions contemplated that Baldwin and/or Darkhorse could retain ownership of their respective properties despite the extinguishment of Owens's security interest in the properties. Thus, Baldwin's interpretation of the agreement creates the possibility of various anomalies. For example, Darkhorse could have retained ownership of the golf course (due to Owens's failure to sell that property at the foreclosure sale on August 17), but Owens nonetheless would have succeeded to Darkhorse's rights under the golf cart leases, since the agreement contained no provision for reassigning those rights back to Darkhorse. Why would the parties have agreed to terms that gave Darkhorse the golf course but Owens the golf carts?

Baldwin's interpretation of the agreement is also inconsistent with paragraph No. 11, which provided that "[a]s of the Effective Date, Owens shall be entitled to receive all rents, income and proceeds attributable to the operations of or upon the Encumbered Properties, and shall be solely responsible for all expenses of operations of or upon the Encumbered Properties . . . ." Why would the parties have assigned all of the income and expenses for the properties to Owens from August 17 forward, without any ending date, if the parties contemplated the possibility that Baldwin and/or Darkhorse could end up retaining ownership of their respective properties due to Owens's failure to complete the foreclosure sale of the properties on August 17?

There may be other inconsistencies as well, but the foregoing suffices to show that Baldwin's attempt to enforce the literal terms of the second sentence of paragraph No. 6 cannot succeed. Read as a whole, the agreement cannot reasonably be construed as extinguishing Owens's security interest in the subdivision under the deed of trust as of August 17, even though the foreclosure sale of the subdivision was not completed on that date. The only way to reasonably harmonize the various provisions of the agreement is to interpret paragraph No. 6 consistently with recital paragraph I, as providing for the release of Baldwin (and Darkhorse) only upon *completion* of the foreclosure sale. Under this interpretation of the agreement, Baldwin's attempt to quiet title to the subdivision in itself is without merit, and the trial court correctly sustained defendants' demurrer to Baldwin's complaint.

II

Denial Of Leave To Amend

Baldwin contends the trial court abused its discretion in sustaining the demurrer without leave to amend because, if permitted, Baldwin could allege: (1) "that the second sentence of [paragraph No.] 6 was placed into the Release Agreement separate from the balance of all other provisions, as the last modification to the document, and in exchange for Baldwin Ranch approving the deletion of a waiver of Civil Code section 1542"; and (2) that "all properties were scheduled to be foreclosed on August 17, 2007 . . . , all parties were represented by counsel during negotiation and development of the Release Agreement, the

final, executed version of the agreement was transmitted to Owens' counsel for review and approval prior to the time Owens' principal signed it, and that Baldwin . . . sought the release provisions in [paragraph No.] 6 in order to specifically bring its obligations to Owens to an end as of August 17, 2007, the day it delivered possession of its properties to Owens." According to Baldwin, these additional allegations would be "sufficient to support the interpretation of the Release Agreement Baldwin . . . proposes" because specific contract provisions control over general provisions and "separately negotiated or added terms are given greater weight . . . than standardized terms or other terms not separately negotiated." As we will explain, however, the additional facts Baldwin proposes to allege would not make Baldwin's interpretation of the agreement any more reasonable. Thus, leave to amend was properly denied.

The gist of Baldwin's argument appears to be that the additional facts would show that it expressly bargained with Owens to exchange a waiver of Civil Code section 1542 for the release language in the second sentence of paragraph No. 6. Civil Code section 1542 provides that "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." Thus, while Baldwin originally wanted the release of liability to encompass all claims Owens might have against Baldwin, whether known or

unknown, Baldwin settled instead for the waiver in the second sentence of paragraph No. 6, which encompassed "any and all Claims relating to or arising out of or under the Loan Documents."

We fail to see how these additional facts make Baldwin's interpretation of the agreement any more reasonable when the agreement is considered and construed as a whole, as we must do. The rule of contract interpretation that "when a general and particular provision are inconsistent, the latter is paramount to the former" (Code Civ. Proc., § 1859) is of no assistance to Baldwin on this point. While the second sentence of paragraph No. 6 may be deemed a "particular provision" with respect to when Baldwin's liability to Owens under the loan documents was to be released (and when Owens's corresponding right to sell the subdivision was to be extinguished), Baldwin fails to explain why the numerous other provisions in the agreement that are inconsistent with that aspect of the second sentence of paragraph No. 6 (set forth above) should be deemed "general." Indeed, we conclude otherwise. What we have here is not a specific provision that conflicts with other general provisions, but various specific provisions that cannot reasonably be reconciled with each other. The rule of contract interpretation in Code of Civil Procedure section 1859 on which Baldwin relies has no bearing in that circumstance.

As for Baldwin's assertion that "separately negotiated or added terms are given greater weight . . . than standardized terms or other terms not separately negotiated," the California

authorities Baldwin cites for that proposition actually support a narrower principle: that handwritten or typed provisions added to a printed form contract govern over inconsistent provisions in the printed form. (See Code Civ. Proc., § 1862; Civ. Code, § 1651; *Welk v. Fainbarg* (1968) 255 Cal.App.2d 269, 275.) Baldwin makes no attempt to show how that narrower principle applies here. In any event, even if we credit Baldwin's broader phrasing of the rule, we fail to see its relevance because Baldwin makes no effort to show that the numerous provisions in the agreement that are inconsistent with the second sentence of paragraph No. 6 were "standardized terms" or were "not separately negotiated."

In the end, Baldwin's argument that it could amend its complaint to state a cause of action rests on the proposition that it would be reasonable to treat the second sentence of paragraph No. 6 as governing over all of the other inconsistent provisions in the contract (set forth above) because the second sentence of paragraph No. 6 was added last and the parties could reasonably be deemed to have intended, by the addition of that sentence, to negate all of the other contrary provisions in the agreement. We cannot accept that as a reasonable conclusion, however, because -- as we have explained already -- accepting Baldwin's interpretation of the agreement would mean that Owens essentially got nothing whatsoever out of the agreement. Under Baldwin's interpretation, Baldwin and Darkhorse were to deliver possession of the subdivision and the golf course to Owens on the very same day that Owens's right to foreclose on the

properties or otherwise collect its debt from Baldwin and Darkhorse was extinguished. Possession without the right to obtain title through foreclosure would have been of no substantial benefit to Owens, and we simply cannot reasonably construe the agreement as providing Baldwin and Darkhorse with a substantial benefit -- the release from millions of dollars in liability -- but providing Owens with essentially nothing.

Because the additional factual allegations Baldwin proposes to add to its complaint would not make Baldwin's interpretation of the agreement one to which the agreement, construed as a whole, is reasonably susceptible, the trial court acted well within its discretion in denying Baldwin leave to amend.[8]

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

ROBIE, J.

We concur:

SCOTLAND, P. J.

HULL, J.

[8] Before oral argument, we notified Baldwin and its attorney that we were considering imposing monetary sanctions for prosecuting a frivolous appeal. Because we have determined that it cannot be said any reasonable attorney would have agreed the appeal was completely without merit (see *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650), imposition of sanctions is not justified.